IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 1323 OF 2007

Maharashtra Rajya Suraksha Rakshah & General Kamgar Union, a registered Trade Union having its office at 113, Gautam Udyog Bhavan, First Floor, LBS Marg, Bhandup, Mumbai-400 078 ..Petitioners

versus

1. Security Guards Board for Greater Bombay & Thane District, having their head office on 2nd floor, Copper Rollers Compound, LBS Marg, Bhandup (West), Mumbai-400 078

2. Bochasanwasi Shri Akshar Purushottam Swami Narayan Sanstha, a registered Public Charitable Trust, having its office at Shree Swami Narayan Mandir, 19, Swaminarayan Chowk, Dadar (C.R.), Mumbai-400 014.

3. M/s. Trig Guard Force Ltd., having their office at Trig House, 10th Road, J.V.P.D. Scheme, Juhu, Mumbai-400 049 ...Respondents

Mrs. Vaishali Bhilare for the petitioner.
Mrs. Lata Desai for the Board in all petitions.

WITH
WRIT PETITION (LODGING) NO. 582 OF 2007
WITH
WRIT PETITION NO. 1073 OF 2007
WITH
WRIT PETITION NO. 1092 OF 2007
WITH

WRIT PETITION (LODGING) NO. 1118 OF 2007
WITH
WRIT PETITION NO. 1186 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1192 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1250 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1251 OF 2007
WITH
WRIT PETITION NO. 1283 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1287 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1288 OF 2007
WITH
WRIT PETITION NO. 1311 OF 2007
WITH
WRIT PETITION NO. 89 OF 2007
WITH
WRIT PETITION NO. 434 OF 2007
WITH
WRIT PETITION NO. 714 OF 2007
WITH
WRIT PETITION NO. 916 OF 2007
WITH
WRIT PETITION NO. 929 OF 2007
WITH
WRIT PETITION NO. 930 OF 2007
WITH
WRIT PETITION NO. 1019 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1164 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1165 OF 2007
WITH
WRIT PETITION NO. 1202 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1358 OF 2007
WITH

WRIT PETITION (LODGING) NO. 1359 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1281 OF 2007
WITH
WRIT PETITION NO. 1093 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1135 OF 2007
WITH
WRIT PETITION (LODGING) NO. 1134 OF 2007

Mr. R.D. Suvarna for respondent No.3 in WP (L) 582 of 2007.
Mr. R.V. Paranjpe for respondent No.2 in WP No. 1073 of 2007.
Mr. B.K. Ashok, instructed by M/s. Beekay Legal, for respondent Nos. 2 and 3 in WP (L) No. 1118 of 2007.
Mr. Prashant Chavan, instructed by M/s. Little & Co., for respondent No.2 in WP No. 1311 of 2007.
Mrs. Ranjana Todankar for the petitioners in W.P. No. 89 of 2007, 714 of 2007, 916, 929, 930, 1019 of 2007 and (L) Nos. 1164, 1165, 1358, 1359 of 2007 and WP No.1202 of 2007.
Ms. Sonali Humane for the petitioners in WP (L) 1134 and 1135 of 2007.
Mr.S.P. Singh for respondent No.2 in WP (L) Nos. 1134 and 1135 of 2007.
Mr. Indrajeet Kulkarni for respondent No.3 in W) (L) Nos. 1134 and 1135 of 2007.

CORAM: **SWATANTER KUMAR, C.J.** &
SMT. RANJANA DESAI, J.

Judgment reserved on : July 02, 2007
Judgment delivered on: July 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

In all the above 29 writ petitions on somewhat similar facts, the petitioners have claimed reliefs for (i) issuance of a writ, order or direction to the respondent-Security Guards Board to initiate action

against the private employer-respondents under Section 42 of the Security Guards Act for contravening clauses 13 and 25 of the Security Guards Scheme, (ii) directing the said respondent-Board to register the security guards listed in Exhibit-A to the writ petitions, and (iii) directing the respondent-employers to get themselves registered with the respondent-Board. In some of the writ petitions it is also prayed that the private employers be restrained from terminating the services of the security guards as listed in exhibits to the writ petition.

2. The petitioners in some of the petitions are Unions registered under the Trade Union Act, 1926, while in other cases even the security guards have filed the writ petitions in their individual capacity. It is the case of the concerned security guards that they were employed by the private employers for watch and ward duty. The private employers are not registered under the provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. There is a clear restriction in law under clause 25 (2) of the Scheme that a principal employer shall not employ security guards other than the security guards who have been allotted to the principal employer by the Security Guards Board. The private respondents, in order to deprive the security guards of the benefits of the Act and the Scheme,

have been engaging the security guards through the security services agencies contrary to law. Even applications were filed to the Board giving the details of their employment and claiming the benefits available to them under the scheme including their registration. Prayer was made for taking action against the private employers-respondents but of no effect resulting in filing of these writ petitions.

3. Along with the petitions, the petitioners have annexed certain documents viz. Attendance registers, identity cards, Union membership, etc. in support of their claim. In all cases the Board has taken the stand that the private employers have not got registration and even the security guards moved applications admittedly as late as in May/June, 2007 and have immediately approached this Court without awaiting for any response from the Board. According to the private respondents, who are allegedly their employers, they have denied the relationship of employer-employee and have also stated that they are not engaging private security guards for watch and ward duty, as such there is no cause of action for the petitioners to approach the Courts. It is also their case that in some cases the services of the security guards were terminated and there are serious disputes with regard to whose employees they are and what is the nature of their job and duties. It is

not necessary for us to go into any greater detail of each petitions as similar matters had come up for consideration before this Court. In civil Writ Petition No. 563 of 2007 (*Maharashtra Suraksha Rakshak Aghadi* vs. *The Security Guards Board for Gr. Bombay & Thane District and others)*, by a detailed order dated 21st June, 2007, the said writ petition, along with other writ petitions, was disposed of with certain directions to the Security Guards Board and other concerned authorities. The relevant portion of the said directions reads as under:-

> "11. The Act of 1981 imposes various obligations upon the Board constituted under the provisions of the Act for registration of the employers and/or individual security guards in accordance with the Regulations and the Scheme formulated by the authorities concerned. Various disputes have been raised in these writ petitions including that the writ petitions are premature inasmuch as the members of the petitioners had not filed any applications before the Board for their registration in accordance with law. The employers, that is the other private respondents, have still raised various disputes that they have not employed security guards and the persons employed by them are primarily carrying on the work like attendants or persons employed for duties unconnected with the functions to be performed by a security guard. All these disputes can be resolved by determination of factual controversies and keeping in mind what is the actual situation on site where the office and/or factories of the private respondents are situated. These controversies can hardly be resolved by the Court in exercise of its powers under Article 226 of the Constitution of India.
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> 12. Thus, in view of the above discussion, while disposing of these writ petitions we consider it

appropriate to issue the following directions for strict adherence by the concerned parties/authorities.

(i) All the security guards, petitioners in all the petitions or the members of the Sangh or the Unions through whom the present petitions have been filed and who have not already filed applications for their registration with the respondent-Board may file such applications within four weeks from today.

(ii) All the pending applications for registration as security guards filed by the individuals as well as the applications received by the Board under clause (i) shall be dealt with and disposed of by the Board in accordance with the Regulations and policies framed by the Board within six weeks thereafter. Orders so passed by the Board shall be notified, besides copies thereof being sent to the Union or individual workmen who have filed these petitions.

(iii) The employer of members of these petitioners and/or even other employers desirous of getting registered with the respondent-Board for providing of security personnel would be also at liberty to move such applications within four weeks from today and the same shall be considered and disposed of by the Board in accordance with law within six weeks thereafter.

(iv) The Board, through its Officers/Officials, shall duly verify the stand of the private employers that the workmen/security guards are not employed and/or whether the workmen/security guards employed by them are or not performing the duties of a security guard and shall prepare an inspection report after site visits. Such report would be considered by the authorities concerned for passing an appropriate order.

(v) The individual security guards who are then registered by the Board shall be allocated to such

concerns/establishments which are desirous of deploying security guards and/or those security guards who are in employment and are then registered shall be granted all the benefits in terms of the Regulations upon the direction of the Board.

(vi) After completion of the above exercise, the Board shall consider and initiate penal action against the private respondent-employers in accordance with the provisions of clause 42 of the Security Guards Scheme, 2005, and the relevant clause on the date of passing of this order.

(vii) Wherever private respondent-employers are required to apply for registration with the respondent-Board, they shall apply, even if, according to them, the members of the petitioners are not employed strictly as security guards and are employed as attendants or car cleaners, etc. This scheme shall be duly considered by the Board and decided in accordance with law. We also make it clear that while allotting the services of the security guards, the Board will keep in mind the fact that as to where were they employed at the time or prior to the institution of these writ petitions.

(viii) The process of registration in either case shall be subject to the satisfaction of the eligibility criteria in relation to various factors which are specified under the Regulations or the Security Guards Scheme framed in 2005".

4. In the present cases also, the petitioners have filed the writ petitions without filing applications before the Security Guards Board in accordance with law. Wherever such applications have been filed, the petitioners have filed writ petitions in undue haste and thus have frustrated the very purpose of requiring the authority to discharge its

statutory obligations prior to invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. No time was given to the Board to deal with such applications and perform the inspection so as to enable the representatives of the Board to factually verify the averments made in the applications and even the present writ petitions. It will be impermissible for this Court to go into such disputed facts in the present writ petitions and it would be more appropriate that the Board in the present cases is also directed to perform its statutory duty and verify the various factual controversies involved in the present cases and pass appropriate orders in accordance with law.

5. For the above reasons, we dispose of these writ petitions also with the above quoted directions which shall be complied with by the Board as per the terms of the period indicated in the directions itself. All the writ petitions are disposed of accordingly. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.